

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

DOCKET NOS.: 2008 - 325-C; 2008-326-C; 2008-327-C; 2008-328-C; 2008- 329- C
ORDER NO. 2009-_____

March ____, 2009

In Re:

Application of Time Warner Cable Information)
Services (South Carolina) LLC, d/b/a Time Warner)
Cable To Amend its Certificate of Public)
Convenience and Necessity to Provide Telephone)
Services in the Service Area of Farmers Telephone)
Cooperative, Inc. and for Alternative Regulation)

Application of Time Warner Cable Information)
Services (South Carolina) LLC, d/b/a Time Warner)
Cable To Amend its Certificate of Public)
Convenience and Necessity to Provide Telephone)
Services in the Service Area of Fort Mill Telephone)
Company d/b/a Comporium Communications and)
for Alternative Regulation)

Application of Time Warner Cable Information)
Services (South Carolina) LLC, d/b/a Time Warner)
Cable To Amend its Certificate of Public)
Convenience and Necessity to Provide Telephone)
Services in the Service Area of Home Telephone)
Company, Inc. and for Alternative Regulation)

ORDER AMENDING
CERTIFICATE OF PUBLIC
CONVENIENCE AND
NECESSITY TO INCLUDE
SERVICE AREAS OF FARMERS,
FORT MILL, HOME, PBT, AND
ROCK HILL

Application of Time Warner Cable Information)
Services (South Carolina) LLC, d/b/a Time Warner)
Cable To Amend its Certificate of Public)
Convenience and Necessity to Provide Telephone)
Services in the Service Area of PBT Telecom,)
Incorporated and for Alternative Regulation)

Application of Time Warner Cable Information)
Services (South Carolina) LLC, d/b/a Time Warner)
Cable To Amend its Certificate of Public)
Convenience and Necessity to Provide Telephone)
Services in the Service Area of Rock Hill)
Telephone Company d/b/a Comporium)
Communications and for Alternative Regulation)

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on the Applications of Time Warner Cable Information Services (South Carolina), LLC d/b/a Time Warner Cable (“TWCIS” or the “Company”) to amend its certificate of public convenience and necessity to include the services areas of Farmers Telephone Cooperative, Inc., (“Farmers”), Fort Mill Telephone Company, Inc., d/b/a Comporium Communications (“Fort Mill”), Home Telephone Company, Inc. (“Home”), PBT Telecom, Incorporated (“PBT”), and Rock Hill Telephone Company d/b/a Comporium Communications (“Rock Hill”), hereinafter referred to as the “RLECs ” or individually as an “RLEC.”¹

The Applications were filed on August 22, 2008, pursuant to Section 253 of the Telecommunications Act of 1996, S.C. Code Ann. § 58-9-280 (Supp. 2008), and the Rules and Regulations of the Commission. In its Applications, TWCIS requested that it be authorized to operate under an alternative regulatory plan pursuant to S.C. Code Ann. § 58-9-575 and § 58-9-585 in the service areas of the RLECs and that the Commission continue to grant TWCIS waivers of the requirements of S.C. Code Ann. Regs. 103-610, 103-631, and any requirement to maintain books and records in accordance with the Uniform System of Accounts.

TWCIS is currently certificated to provide interexchange and local voice services pursuant to Order No. 2004-213 and Order No. 2005-385(A).

By letter, the Commission instructed TWCIS to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Applications. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which

¹ On November 18, 2008, TWCIS withdrew its Application for authority to serve St. Stephens Telephone Company, Inc.’s service area. *See*, Docket No. 2008-300-C.

to file the appropriate pleadings for participation in this matter. TWCIS filed proofs of publications with the Commission between October 1, 2008 and October 2, 2008 for each individual docket. Petitions to intervene were filed by each RLEC in their respective dockets on September 10, 2008. Pursuant to S.C. Code Ann. § 58-4-10(B)(Supp. 2008), the South Carolina Office of Regulatory Staff ("ORS") is a party of record in this proceeding.

On September 18, 2008, the RLECs filed a Return to TWCIS' Motion for Protective Treatment of Exhibit 3 contending that TWCIS had not properly sought confidential treatment and that the information was not trade secret. TWCIS responded clarifying that it only sought confidential treatment of the number of access lines TWCIS is serving in South Carolina. TWCIS also requested on October 9, 2008 that the Commission appoint a hearing officer to hear and decide procedural motions. The Commission issued a Directive on October 15, 2008, in which it granted TWCIS's request for confidential treatment and appointed Randall Dong as Hearing Officer. *See* Order Nos. 2008-718; 2008-719; 2008-720; 2008-721; and 2008-722.

On October 13, 2008, TWCIS filed Motions to Compel responses to discovery propounded to each RLEC and, in the alternative sought a Motion in Limine preventing the RLECs from raising the issue of whether the grant of the Applications would adversely affect the availability of affordable basic local exchange service or adversely impact the public interest. On December 1, 2008, the Hearing Officer ruled in part denying and in part granting TWCIS' Motion to Compel certain Interrogatories and Production of Document Requests.

On October 22, 2008, the RLECs filed a Motion to Consolidate on the grounds that the Applications involved similar questions of law and fact. TWCIS filed a Return to the RLEC's Motion to Consolidate on November 11, 2008, recommending that the Commission hold the RLEC Motion in abeyance until after the submission of prefiled testimony. The Hearing Officer

ruled on December 11, 2008 to grant the Motion to Consolidate, finding that the prefiled testimony submitted by the parties identified common issues of fact and law, that judicial economy would be best served by consolidation, and that no prejudice would result to any party as a result of consolidation. The Hearing Officer granted TWCIS's Motion to Allow Julie Laine to Testify by Videoconference on December 19, 2008 and granted TWCIS's Motions for Protective Treatment of Certain Redacted Information contained in the Applications and ORS's Motion for Protective Treatment for Certain Portions of Christopher J. Rozycki's testimony on December 30, 2008.

A hearing in this matter was conducted on January 6-7, 2009. At the hearing, TWCIS was represented by C. Bradley Hutto, Esquire, Frank Ellerbe, III, Esquire, and Bonnie D. Shealy, Esquire. ORS was represented by Nanette S. Edwards, Esquire and Jeffrey M. Nelson, Esquire and the RLECs were represented by Margaret Fox, Esquire, John Bowen, Jr. Esquire, and Thomas J. Navin, Esquire. Mr. Navin was admitted *pro hac vice*. (T. Vol. I at 8).

The Commission heard testimony from eight witnesses. Ms. Charlene Keys, Mrs. Julie Laine, Mr. Frank Knapp, Mr. Warren R. Fischer, and Dr. August H. Ankum testified on behalf of the Company and in support of the Applications. On behalf of the RLECs, Mr. Douglas Meredith and Mr. H. Keith Oliver presented testimony requesting certain conditions be required or in the alternative, that the Applications be denied. ORS presented one witness, Mr. Christopher J. Rozycki, who testified that the Applications satisfy the requirements of Section 58-9-280(B).

Based on the evidence and testimony in the record, we hold that the Applications should be granted subject to the provisions set forth in this Order.

telecommunications services already offered in the State. In addition to its interconnected VOIP service, Digital Phone, the Company provides high capacity private line, point to point transmission/telecommunications to wholesale and retail business customers. (T. Vol I at 35). Digital Phone is a substitute for traditional wireline telecommunications services and is almost indistinguishable from the telecommunications services provided by the RLECs (T. Vol. II at 699; 1013-1014). Both Mr. Meredith on behalf of the RLECs and Mr. Rozycki, witness for ORS, testified that Digital Phone should be classified as a telecommunications service. (T. Vol. II at 1014; 1391).

The FCC has thus far failed to make a final determination as to whether fixed interconnected VOIP is a telecommunications service or an information service. (T. Vol II at 737).³ The FCC did, however, preempt the Minnesota Public Service Commission from requiring state certification of a nomadic VOIP provider. *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission ("Vonage Order")*, 19 FCCR 22404 (November 12, 2004).

In *Vonage*, the FCC ruled that state regulation of nomadic VOIP services was preempted by federal law and policy because “the characteristics of [Vonage’s nomadic VOIP service] preclude any practical identification of, and separation into, interstate and intrastate communications for purposes of effectuating a dual federal/state regulatory scheme.” *Vonage* at ¶ 14. The FCC also held that to the extent other entities, such as cable companies, provide VOIP services, the FCC would preempt state regulation to an extent comparable to *Vonage*. *Vonage Order* at ¶ 32.

³ Notably, the FCC has extended additional regulation to fixed interconnected VOIP providers that are similar if not identical to the regulations pertaining to telecommunications carriers. Mrs. Laine stated that there are very few remaining requirements of Title II that are not applicable to interconnected VOIP providers. (T. Vol. II at 703).

The facts and circumstances presented to this Commission in this case can be distinguished from those which led the FCC to preempt the Minnesota Public Service Commission in its *Vonage Order*. As testified to by Ms. Keys, Digital Phone is not identical to Vonage in that it does not use the public internet to deliver “telephone service” and Digital Phone is not portable or nomadic but is rather a “fixed” interconnected VOIP service. (T. Vol. I at 113 ll. 14-19; 127 -128). Mr. Meredith likewise agreed that Digital Phone is not like Vonage. (T. Vol. II at 1013). A more compelling distinction between Vonage and Digital Phone is TWCIS’ ability to jurisdictionalize calls for access billing and reporting purposes. (T. Vol. II at 687-690).

We find that Digital Phone service is a telecommunications service as that term is defined by Section 58-9-10.

B. THE FCC HAS NOT PREEMPTED THE ENTIRE FIELD OF VOIP SERVICES.

While states are preempted from regulating nomadic VOIP services, neither the FCC nor the federal courts have held that regulation of fixed VOIP is subject to federal preemption. On appeal, the Eighth Circuit upheld the *Vonage Order* and the FCC’s rationale for preempting state regulation of nomadic VOIP services, but specifically distinguished fixed VOIP service from nomadic VOIP when it concluded that preemption of state regulation of fixed VOIP services “remains an open issue.” *Minn. Pub. Utils. Comm’n v. FCC*, 483 F.3d 570, 583 (8th Cir. 2007). That Court found that, “when VoIP is offered as a fixed service rather than a nomadic service, the interstate and intrastate portions of the service can be more easily distinguished.” *Id.* at 575.

Other courts, and even the FCC, have indicated that fixed VOIP services should be treated differently than nomadic VOIP. In *Comcast IP Phone of Missouri, LLC v. Mo. Pub. Utils. Comm'n*, 2007 WL 172359 (W.D. Mo. 2007), a Missouri federal court held that “the FCC has not preempted the entire field of VoIP services” and found that a state regulatory authority was legally permitted to determine whether a fixed VOIP service was subject to state regulation. Furthermore, the FCC itself has stated that VOIP providers which possess the capability to identify the jurisdictionality of customer calls would no longer qualify for the preemptive effects of the *Vonage Order* and would be subject to state regulation. *In the Matter of Universal Service Contribution Methodology*, 21 FCCR 7518 ¶ 56 (June 27, 2006). This is because the central rationale justifying preemption would no longer be applicable. *Id.* at ¶ 56.

We find that because TWCIS can separate interstate and intrastate calls the Commission is not preempted and has the authority to regulate intrastate fixed VOIP telecommunications services within the State. We conclude that neither the FCC nor the federal courts have preempted intrastate regulation of interconnected VOIP services.

We also conclude that by submitting its Applications TWCIS has acknowledged and agrees that its interconnected VOIP service, Digital Phone, is a regulated “telecommunications service” and as such, its rates, terms and conditions are tarified and subject to the jurisdiction of the Commission. Indeed, Mrs. Laine testified that by filing for authority as a CLEC TWCIS has committed to complying with all applicable rules, regulations and policies of the Commission, and she acknowledged that TWCIS is a telephone utility (T. Vol. II at 668; 704). Mrs. Laine also acknowledged that Digital Phone should be regulated to the same extent the Commission regulates other CLECs. (T. Vol. II at 704).

resources to provide its services. Digital Phone service is currently offered in the service areas of Verizon, AT&T, Windstream f/k/a Alltel, Hargray Telephone, Bluffton Telephone and Horry Telephone Cooperative. (T. Vol. I at 31). Mrs. Laine testified that TWCIS will rely on its current management team for technical and managerial support including its local employees led by Ms. Keys. (T.Vol. II, at 609). She also described TWCIS's financial health. TWCIS' revenues for 2007 totaled over \$33 million with net income of \$5 million. (T. Vol. II at 619).

Mr. Rozycki, on behalf of ORS, testified that TWCIS has demonstrated that it possesses the technical, financial, and managerial resources sufficient to provide the services requested throughout the entire state of South Carolina as it has operated in the State pursuant to Order No. 2004-213. He also stated that ORS has not received significant service complaints concerning TWCIS. (T. Vol II at 1396).

We conclude that TWCIS has demonstrated that it possesses the necessary technical, financial, and managerial resources to provide its proposed services in the RLEC service areas. We note that no party asserted that TWCIS lacks the necessary technical, financial and managerial resources to provide the proposed services.

B. SERVICE STANDARDS

At the hearing, Mrs. Laine asserted that TWCIS complies with all applicable service standards set by the Commission (T. Vol. II at 654). Mr. Rozycki testified that TWCIS currently offers Digital Phone Service in South Carolina and that it meets the service standards which the Commission has adopted. The Company has filed the requisite service quality reports. (T. Vol. II at 1384). We find that TWCIS has complied and intends to continue to comply with the

Commission's service standards. Again, no party offered testimony or presented evidence that TWCIS has failed to meet the Commission's service standards.

C. PROVISION OF THE SERVICE WILL NOT ADVERSELY IMPACT THE AVAILABILITY OF AFFORDABLE LOCAL EXCHANGE SERVICE

In reaching a finding in this matter, this Commission must also determine whether the entry of TWCIS will adversely impact the availability of affordable local exchange service. In support of its position that there would be no such adverse impact, TWCIS presented two witnesses, Mr. Warren R. Fischer, the Chief Financial Officer for QSI Consulting, Inc., and Dr. August H. Ankum, Senior V.P. at QSI Consulting, Inc., who described the financial health of the RLECs. The RLECs presented the testimony of Mr. Douglas Meredith, Director – Economics and Policy for John Staurulakis, Inc., and Mr. H. Keith Oliver, Sr. V.P. of Corporate Operations for Home Telephone Company. The RLEC witnesses set forth certain requirements that they requested this Commission impose as a condition to granting the TWCIS Applications. The ORS presented the testimony of Mr. Rozycki who supported TWCIS' request to extend service to the RLEC service areas.

Mr. Warren R. Fischer testified that because the RLECs have elected alternative regulation, their rates for residential and single-line business customers are subject to a statewide average for two years with any increases subject to an inflation-based index adopted by the Commission.⁵ Thus, there are limits as to the amount and timing of any price increase for residential and single-line business rates. Additionally, he asserted that the RLECs have the

⁵ S.C. Code Ann. §58-9-576 (B) (3) and (5) set forth the parameters for price increases for those small LECs electing alternative regulation. Upon election, the residential and single-line business rates are capped for two years unless at the time of election the rates were less than the statewide average. Additionally, during any given twelve month period the aggregate increases in the tariffed rates for other services must not exceed five percent of the aggregate revenues from other tariffed services during the prior twelve month period.

financial strength to withstand competitive entry. (T. Vol. I at 319). Mr. Fisher noted that Farmers had \$104 million in retained earnings; that Fort Mill has paid out \$15 million in dividends and had \$51 million in retained earnings; that Home has paid out a significant amount of dividends over the last five years; that PBT Telecom also paid out significant dividends over the last five years; and that Rock Hill paid out over \$55 million in dividends while retaining about \$165 million of earnings. (T. Vol. I at 321-324). During cross examination of Mr. Fischer, Counsel for the RLECs appeared to contend that the rate of return on their regulated activities has decreased in recent years. (*See*, Hearing Exhibits 13-14). Because the RLECs are not rate of return regulated, the method of determining the RLEC's rate of return proposed at hearing was arrived at by dividing net operating income by net telecommunications plant as reported by the RLECs on the annual reports. However, it was never made clear whether net telecommunications plant included amounts associated with both regulated and non-regulated plant and whether net operating income was solely derived from regulated services. (T. Vol. I at 331-333). Notably, neither the accuracy of the amounts paid out in dividends nor the amounts associated with retained earnings were contested only whether those amounts were generated primarily from non-regulated operations. (T. Vol. I at 348-358). Mr. Fischer argued that it is difficult to comprehend that the RLECs would put their operations at risk by paying out substantial dividends based on total operations while believing that their rate of return on regulated operations was significantly decreasing over the same time period. (T. Vol. I at 350).

Dr. August H. Ankum, Senior V.P. at QSI Consulting, Inc., likewise contended that TWCIS's market entry would not adversely impact the affordability of basic services because of the price regulation elected by the RLECs. Additionally, he asserted that the RLECs are well positioned in the marketplace to compete for both regulated and nonregulated services by

concerned that TWCIS has a competitive advantage because the FCC has not classified Digital Phone as a telecommunications service, we have addressed this concern by determining that TWCIS is a regulated telephone utility and that Digital Phone is a telecommunications service. We conclude that approval of the Applications will not adversely impact the availability of affordable local exchange service.

**D. PARTICIPATION IN THE STATE UNIVERSAL SERVICE FUND
("STATE USF")**

Dr. Ankum testified that TWCIS' entry into the marketplace would advance universal service objectives by increasing the availability of quality service offerings at affordable rates. (T. Vol I at 381). ORS is the administrator of the State USF. ORS witness, Mr. Rozyci, testified that TWCIS is currently contributing to the State USF. (T. Vol. II at 1386; 1396). Mrs. Laine testified that TWCIS contributed \$279, 918 to the State USF in 2007. (T. Vol.II at 613). The RLECs did not offer testimony or any evidence that TWCIS has failed to participate in the State USF but did request that the Commission require TWCIS to pay into the State USF based on the full voice portion of the service. The RLECs' concern is that carriers offering bundled services pay a discounted amount associated with the bundled local service as opposed to an amount based on the stand alone price or "full" price of the local service. (T. Vol. II at 1077; 1221-1222). We find that TWCIS is participating in the State USF. As to the issue of discounted payments into the state universal service fund, we defer this issue to Docket No. 1997-239-C.

**E. PROVISION OF THE SERVICE DOES NOT OTHERWISE ADVERSELY
IMPACT THE PUBLIC INTEREST**

Mr. Frank Knapp, Jr., the President and Chief Executive Officer of the South Carolina Small Business Chamber of Commerce, testified in support of TWCIS's Applications to serve the RLEC service areas, stating "We believe that competition gives small businesses more

choices and acts as a check on prices... We want that same ability to choose our local telephone provider.” (T. Vol. I, at 175). He pointed to the creation of the State USF and argued that the whole purpose of setting up the State USF was to allow the opportunity for competition in those areas. (T. Vol. I at 188 ll. 9-20). Mr. Fischer also testified in support of the Company that the granting of the Applications would not adversely impact the public interest. (T. Vol I at 196-197). Dr. Ankum argued that granting the Applications allows for more consumer choice to rural areas in the State. (T. Vol I at 388-390). Ms. Key and Mrs. Laine noted that TWCIS has made significant investments within South Carolina and employs over 1400 employees. (T. Vol I at 31; Vol. II at 611).

The RLEC witnesses, Mr. Meredith and Mr. Oliver, request that the Commission grant TWCIS’ Applications but condition the amended certificate so that TWCIS must continue using an unaffiliated non-VOIP third party CLEC, such as Sprint, for interconnection and comply with the FCC’s *Time Warner Declaratory Ruling*, and adopt other conditions set forth in more detail below (T. Vol. II at 1073-1081).

A major concern of the RLECs is the continued confusion over the regulatory treatment of VOIP service and the fact that the FCC has not classified VOIP as a telecommunications service. (T. Vol. II at 741; 1052). The RLECs fear that this confusion will afford TWCIS an unfair competitive advantage in deploying its voice service. (T. Vol. II at 1052-1053). Another major concern voiced by the RLECS is that TWCIS enjoys a market power that the RLECs do not possess. (T. Vol. II at 1053). Mr. Oliver refutes the Company’s contention that competition in this case is good for society and will have a positive impact on service offerings to consumers absent the creation of a truly level playing field. (T. Vol. II at 1070). He argues that granting

the Applications without the recommended conditions could have profound public interest implications and could adversely impact the availability of affordable local exchange service. (T. Vol. II at 1073; 1086).

We find no substantial evidence that TWCIS enjoys a competitive advantage over the RLECs. We conclude that approval of the TWCIS Applications will serve the public interest by increasing the level of competition and will allow residential customers to have access to a facilities-based competitive local service provider offering different pricing. However, we expressly find that TWCIS is subject to the same Commission orders, rules, regulations and requirements that apply to CLECs holding certificates of public convenience and necessity granted by this Commission. With this condition, the granting of the Applications is in the best interests of the citizens of the State of South Carolina.

F. ADDITIONAL CONDITIONS ON GRANT OF APPLICATIONS

Mr. Meredith recommended that the Commission (1) require TWCIS to comply with all applicable State rules and regulations; (2) require TWCIS to use Sprint as an intermediary carrier for Digital Phone VOIP service and prohibit TWCIS from seeking numbering resources directly from NANPA and from seeking interconnection directly with the RLECs; (3) require TWCIS and Sprint to abide by the Time Warner Declaratory Ruling; (4) prohibit TWCIS from providing wholesale telecommunications services other than high capacity point to point private line services; (5) require TWCIS to file the same reports and comply with the same service quality standards applicable to the RLECs; and (6) require TWCIS' unaffiliated non-VOIP wholesale provider to established a Point of Interconnection ("POI") within the RLEC service area or if the POI is outside the RLEC service area to bear the financial burden of transporting

calls from the RLECs' boundary to the POI. (T. Vol. II at 740-741). Alternatively, Mr. Meredith recommends that if these conditions are not required that the Commission should review additional matters to ensure the public interest is met. (T. Vol. II at 754). Specifically, he recommended that the Commission should find that Digital Phone service is not a telecommunications service under Section 251 of the Telecommunications Act of 1996; determine that TWCIS does not satisfy 47 CFR 51.100; and that the Commission should establish a level playing field in the regulation of all services. (T. Vol. II at 754). In addition to the conditions identified by Mr. Meredith, Mr. Oliver recommended that the Commission require that the assigned numbers for TWCIS' VOIP service remain related to the geographic area or rate center for which they are intended; that TWCIS should pay into the State USF based on the full voice portion of their service offering; and that TWCIS should agree to make programming available to the RLECs on a "most favored nation" basis. (T. Vol. II at 1076-1079).

Mrs. Laine argued that the conditions recommended by the RLECS are not imposed on other CLECs and there is no reason to require such conditions of TWCIS. (T. Vol. II at 660). She stated that some of the conditions are so rigid as to prevent TWCIS from being able to react to changing business conditions, including changing its own vendors and suppliers. (T. Vol. II at 660-661). TWCIS has received certification from other state commissions to provide its Digital Phone service and such conditions were not imposed. (T. Vol. II at 720-721). Mr. Meredith acknowledged that to impose the requested conditions or stipulations would be a case of "first impression" and that none of the other states have thus far imposed such conditions. (T. Vol. II at 1031-1033).

ORS witness, Mr. Rozycki, suggested the following conditions in response to questions from the Commissioners: (1) as long as TWCIS's VOIP service is not designated as a "telecommunications service" by the FCC, then TWCIS shall interconnect with the RLECs using the services of a certificated telecommunications carrier as prescribed by the FCC in its Order in WC Docket No. 06-55; (2) TWCIS shall comply with all the rules governing CLECs with the exception of the waivers granted in Order No. 2004-214; (3) TWCIS shall contribute to the State USF and shall comply with all current state rules governing the State USF; and (4) TWCIS shall not transmit any improperly identified traffic to the RLECs. (*See* Hearing Exhibit 20; T. Vol. II at 1407-1411).

We find based on the testimony and the evidence in the record that the Company has demonstrated that it possesses the technical, financial, and managerial resources sufficient to provide the services requested; that the Company will be able to meet the service standards that the Commission adopts; that the provision of the service will not adversely impact the availability of affordable local exchange service; that the Company is participating in the support of universally available telephone service and will continue to do so; and that the provision of the service does not otherwise adversely impact the public interest.

We decline to impose the more rigorous conditions suggested by the RLECs as we agree that TWCIS must have the flexibility to change vendors and add or remove other services through its tariff filings.

We decline to impose conditions that would require TWCIS to return to the Commission for approval to change vendors and suppliers or that would require TWCIS to apply for an amended certificate to add or delete new services. We also decline to prohibit TWCIS from

requesting interconnection directly with the RLECS as TWCIS has previously entered into interconnection agreements with Hargray and HTC (*See*, Docket Nos. 2006-197-C and 2006-233-C). Because we find that TWCIS is a telephone utility providing telecommunications services, TWCIS may seek interconnection pursuant to Section 251 of the Telecommunications Act or may use a wholesale provider who is certificated to operate within the State. For the same reasons, we decline to impose a prohibition on TWCIS obtaining numbering resources directly from NANPA or from porting numbers.

Moreover, we find that the issues concerning the location of the POI and paying into the State USF based on the full voice portion are not appropriate issues to be addressed in this certification proceeding. We also find that the RLEC's request to require TWCIS to provide programming on a "most favored nation" basis to the RLECs is outside of our jurisdiction.

But, given the continued uncertainty at the federal level of the classification of fixed interconnected VOIP services, we expressly require in this Order that the same Commission orders, rules, regulations and requirements that apply to CLECs also apply to TWCIS. Specifically, we clarify that TWCIS is required to comply with all applicable State rules and regulations, and to the extent TWCIS uses underlying carriers, those carriers must be authorized to do business in the State of South Carolina; they must hold valid certificates of public convenience and necessity issued by this Commission; and they must have an interconnection agreement with the RLECs. TWCIS shall not transmit any improperly identified traffic and shall assign telephone numbers in accordance with existing rate center boundaries.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. TWCIS is a limited liability company organized under the laws of the State

of Delaware. TWCIS is registered with the South Carolina Secretary of State, and TWCIS holds a Certificate of Authority to transact business within the State of South Carolina from the South Carolina Secretary of State.

2. TWCIS is a provider of local exchange and interexchange telecommunications services and wishes to extend its services to the RLEC service areas in South Carolina.

3. TWCIS is a “telephone utility” as defined by S.C. Code Ann. Section 58-9-10.

4. Digital Phone Service is a regulated telecommunications service as defined by S.C. Code Ann. Section 58-9-10.

5. Digital Phone service is a fixed interconnected VOIP service as defined by 47 C.F.R. 9.3.

6. Neither the FCC nor the federal courts have expressly preempted state regulation of telecommunications services provided via fixed interconnected VOIP.

7. No party argued that this Commission lacked jurisdiction to issue an amended certificate or that this Commission lacked the authority to impose conditions on the granting of any amended certificate.

8. The Commission concludes that TWCIS has the financial, managerial, and technical resources to provide the telecommunications services it seeks to offer in the expanded service areas.

9. The Commission concludes that TWCIS’ provision of service will not adversely impact the availability of affordable local exchange service.

10. The Commission concludes that TWCIS will participate in the support of universally available telephone service at affordable rates to the extent that TWCIS may be required to do so by the Commission.

11. The Commission concludes that TWCIS will provide services which will meet the service standards of the Commission.

12. The Commission concludes that the provision of telecommunications services by TWCIS will not adversely impact the public interest.

13. The Commission concludes that granting the Applications is in the best interests of the citizens of the State of South Carolina.

14. To the extent TWCIS utilizes a wholesale carrier, that carrier must be authorized to do business in the State of South Carolina, must hold a valid certificate of public convenience and necessity issued by this Commission, and must have an interconnection agreement with the RLECs.

15. TWCIS shall comply with all Commission Orders, rules and regulations.

16. We find that the Company's request for continued waivers of the requirements of S.C. Code Ann. Regs. 103-610, 103-631, and any requirement to maintain books and records in accordance with the Uniform System of Accounts should be granted. No party opposed the Company's request.

17. TWCIS shall contribute to the State Universal Service Fund in compliance with Commission Orders.

18. TWCIS shall not transmit any improperly identified traffic to the RLECs.

19. TWCIS shall assign telephone numbers in accordance with existing rate center boundaries.

IT IS THEREFORE ORDERED:

1. TWCIS's Certificate of Public Convenience and Necessity is amended to allow TWCIS to provide competitive, facilities-based intrastate local and interexchange voice telecommunications services in the service areas of Farmers Telephone Cooperative, Inc., ("Farmers"), Fort Mill Telephone Company, Inc., d/b/a Comporium Communications ("Fort Mill"), Home Telephone Company, Inc. ("Home"), PBT Telecom, Incorporated ("PBT"), and Rock Hill Telephone Company d/b/a Comporium Communications ("Rock Hill").

2. TWCIS shall contribute to the State Universal Service Fund in compliance with Commission Orders.

3. TWCIS shall comply with all Commission orders, rules and regulations.

4. TWCIS shall only use underlying carriers that are authorized to do business in the State of South Carolina, that hold valid certificates of public convenience and necessity issued by this Commission, and that have interconnection agreements with the RLECs.

5. TWCIS shall operate under the alternative regulatory plan as set forth by S.C. Code § 58-9-575 and 58-9-585 and approved in Order No. 2004-495 in the RLEC service areas.

6. TWCIS has the financial, managerial, and technical resources to provide the telecommunications services it seeks to offer to the expanded service areas.

7. TWCIS continues to meet all statutory requirements for the provision of service as a CLEC as delineated in S.C. Code Ann. Section 58-9-280 (Supp.2008). Accordingly, TWCIS meets the statutory requirements to provide service in the proposed expanded service area.

8. The request for continued waivers of the requirements of S.C. Code Ann. Regs. 103-610, 103-631, and any requirement to maintain books and records in accordance with the Uniform System of Accounts is granted.

9. TWCIS shall not transmit any improperly identified traffic to the RLECs.

10. TWCIS shall assign telephone numbers in accordance with existing rate center boundaries.

11. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

ATTEST:

Elizabeth B. Fleming, Chairman

John E. Howard, Vice-Chairman
(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

DOCKET NOS.: 2008-325-C; 2008-326-C; 2008-327-C; 2008-328-C; 2008-329- C

In Re:

Application of Time Warner Cable Information)
Services (South Carolina) LLC, d/b/a Time Warner)
Cable To Amend its Certificate of Public)
Convenience and Necessity to Provide Telephone)
Services in the Service Area of Farmers Telephone)
Cooperative, Inc. and for Alternative Regulation)

Application of Time Warner Cable Information)
Services (South Carolina) LLC, d/b/a Time Warner)
Cable To Amend its Certificate of Public)
Convenience and Necessity to Provide Telephone)
Services in the Service Area of Fort Mill Telephone)
Company d/b/a Comporium Communications and)
for Alternative Regulation)

Application of Time Warner Cable Information)
Services (South Carolina) LLC, d/b/a Time Warner)
Cable To Amend its Certificate of Public)
Convenience and Necessity to Provide Telephone)
Services in the Service Area of Home Telephone)
Company, Inc. and for Alternative Regulation)

CERTIFICATE OF SERVICE

Application of Time Warner Cable Information)
Services (South Carolina) LLC, d/b/a Time Warner)
Cable To Amend its Certificate of Public)
Convenience and Necessity to Provide Telephone)
Services in the Service Area of PBT Telecom,)
Incorporated and for Alternative Regulation)

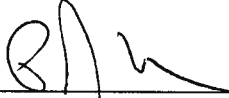
Application of Time Warner Cable Information)
Services (South Carolina) LLC, d/b/a Time Warner)
Cable To Amend its Certificate of Public)
Convenience and Necessity to Provide Telephone)
Services in the Service Area of Rock Hill)
Telephone Company d/b/a Comporium)
Communications and for Alternative Regulation)

This is to certify that I, Pamela J. McMullan, an employee with the Office of Regulatory Staff, have this date served one (1) copy of the **PROPOSED ORDER** in the above-referenced matters to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

M. John Bowen Jr., Esquire
McNair Law Firm, P.A.
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Columbia, SC, 29211

Bonnie D. Shealy, Esquire
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Pamela J. McMullan

March 23, 2009
Columbia, South Carolina